



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1995

Mr. Darryl W. Brown
Staff Attorney
VIA Metropolitan Transit Authority
P.O. Box 12489
San Antonio, Texas 78212

OR95-995

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34411.

The VIA Metropolitan Transit Authority (the "authority") received a request for documentation relating to the requestor's sexual harassment and EEOC complaints. You claim that the requested information is excepted from disclosure under sections 552.103(a) and 552.107(1) of the Government Code. You have submitted to this office for review representative samples of the documents requested.¹

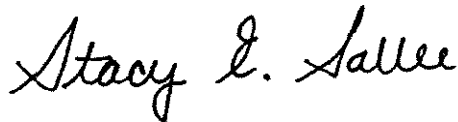
Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The authority has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The authority must meet both prongs of this test for information to be excepted under 552.103(a).

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it--unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982). You state that the requestor has filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), in which she complains that she has been sexually harassed. Additionally, you submitted a request by the requestor's attorney to the EEOC for a right to file suit against the authority based on this complaint. This office has previously held that a pending complaint before the EEOC indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 281 (1981). Therefore, the authority has met the first prong of the section 552.103(a) test. We also conclude that the documents submitted to this office for review are related to the anticipated litigation. Therefore, the authority may withhold from required public disclosure the submitted documents under section 552.103(a). We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

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²We note that you have also raised section 552.107(1) as an exception to required public disclosure. As we have concluded that the authority may withhold the requested information under section 552.103(a), we need not now address your section 552.107(1) claim. However, if the authority receives another request for documents the authority believes are excepted from disclosure under section 552.107(1), we suggest that you re-submit the documents together with your arguments as to why section 552.107(1) excepts those documents from disclosure.

Ref.: ID# 34411

Enclosures: Submitted documents

cc: Ms. Gladys J. Martinez
VIA Metropolitan Transit Authority
P.O. Box 12489
San Antonio, Texas 78212
(w/o enclosures)